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Applicants respectfully submit that this is an incorrect construction of claim 1. Claim 1 expressly recites a simulated calling party: "setting up a non-associated telephone call to the recipient telephone number *from a simulated calling party*" (emphasis added).

Moreover, the construction for "non-associated telephone call" that Applicants have been consistently applying is taken directly from the patent specification, which likewise defines this term as a simulated call. Specifically, as noted in the responses to the previous actions, the term "non-associated telephone call" is expressly defined at pages 3-4 of Applicants' specification. Among other things, it is a *simulated* call from a *simulated* calling party, *where no actual call is provisioned* (emphasis added):

> The term "non-associated telephone call" means a simulated telephone call *from a simulated calling party* (having the same telephone number as the message code) to the real recipient telephone number. In the non-associated telephone call, the caller-identification information for the simulated calling party is communicated (e.g., using SS7) to the recipient telephone number, *but no actual call is provisioned*.

The law of claim construction clearly supports Applicant on this issue. A patent applicant is "free to be his own lexigographer"—that is, he has the right to choose his own definitions for terms used in the claims. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (*en banc*) ("As we have often stated, a patentee is free to be his own lexicographer."). Thus, provided that the patent applicant's definition of a claim term is clearly stated in the patent specification (or the prosecution history), that definition controls as the correct construction of the claim term. "Although words in a claim are generally given their ordinary and customary meaning, a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term

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is clearly stated in the patent specification or file history." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

Accordingly, Applicants' clear and express definition serves as the only proper construction for claim term "non-associated telephone call." The Examiner's apparent construction ("a signal to the recipient equipment") is overbroad. Since the Examiner's construction is, Applicants submit, improper under controlling case law, and since the Examiner's rejections over the prior art turn critically on this incorrect construction, Applicants submit that all claims are allowable when the proper construction from Applicant's specification is employed.

On either construction, the Examiner does not purport to find this claim feature in the primary reference, Albal. The Examiner also does not find this feature in Tate.

The Examiner instead purports to find this feature at 3:41-55 of the new reference, Meldrum. In particular, the Examiner identifies that "[t]he call manager sends a SS7 signal to the customer equipment." (Action, at 4.)

Applying the correct construction urged by Applicants, Meldrum does not disclose a "non-associated telephone call ... from a simulated calling party." Meldrum's use of the SS7 signal occurs in connection with an *actual* call, not a *simulated* call. This is clear from the outset of the patent, which explains the problem to which the invention is directed, namely, the difficulty that an actual caller (not a simulated caller) can have in reaching someone who has multiple telephone numbers (1:13-22):

> Trends such as telecommuting, virtual offices, contract employment, etc. have led to the proliferation of both land-based and cellular phone services. It is not uncommon for a person to have different telephone numbers at their corporate office, their home office, their home, and one or more cell phone numbers. Callers are therefore often

required to dial multiple numbers in order to reach a person. This is not only a waste of time, but expensive. A number of prior "simultaneous ring" systems have been proposed.

Meldrum discloses a simultaneous ring system that couples an actual incoming call (not a simulated call) to any one of several telephone numbers (1:65-2:5):

> In response to receiving an incoming call on the user-line, the simultaneous ring system simultaneously rings target phone numbers associated with the telephone number and then transfers the telephone call to the telephone network if a connection to one of the target phone numbers is made.

With regard to the passage cited by the examiner, it is likewise clear that the passing of the SS7 signal to the call manager 54 occurs in connection with an actual call, not a simulated call. As explained at 3:49-52, Meldrum discloses that the call manager 54 then determines if this incoming call is to a telephone number that belongs to a "valid subscriber." At 3:52-53, Meldrum explains that the call manager 54 then queries a database to look up "target telephone numbers" based on this dialed number of the incoming call, and then (3:54-56) initiating SS7 calls on the outbound channels for each of the target telephone numbers.

Although the details of this process are not precisely disclosed in this passage, apparently the call manager 54 uses the part of the SS7 signal containing the *called* party's telephone number—not the part of the SS7 signal containing the actual *calling* party's telephone number— to identify a series of "target telephone numbers" to be rung simultaneously. Thus, not only is Meldrum directed to *actual* (not *simulated*) calls, but this passage does not disclose the use of the actual calling party's telephone number (the caller-identification feature) for any purpose.

Accordingly, there is no disclosure in the cited passage of Meldrum of setting up of a "non-associated telephone call … from a simulated calling party." As noted above, that term has been expressly defined in the specification as pertaining to the situation where *no actual call is*

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provisioned, and the claim itself expressly recites "a simulated calling party". The simultaneous ring process disclosed in the cited passage of Meldrum is disclosed as being performed in connection with an actual call from an actual party, and so does not supply the teaching that is missing also from Albal and Tate.

"providing a message code corresponding to the selected message, wherein the message code is in the format of a telephone number"

Claim 1 also recites this feature. The Examiner purports to find this feature in Albal. Applicants respectfully disagree. The Examiner in analyzing Albal first concludes that "the selected message" in Albal is the calling party's caller identification, e.g., the calling party's name. (Action, at 3.) The system uses the telephone number of the calling party to select the name of the calling party.

But Albal does not then "provid[e] a message code corresponding to the selected message, wherein the message code is in the format of a telephone number," as also recited by the claim. The Examiner purports to find this disclosure as follows: "The caller's information is provided to the subscriber and the information includes the name and the telephone number of the caller 60. (Action, at 3.) It appears, therefore, that the Examiner is saying that the calling party's telephone number is both the information used to select the purported "selected message" (the caller's name), and the "message code" of the claim. However, the claim clearly contemplates that the "message code" is different than the telephone number of the calling party. Indeed, different terms are used for these concepts, with the "telephone number of the calling party" being expressly recited in the preamble, and the "message code" being expressly recited in the second claim element.